

April 4, 2003

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL

SUBJECT: King County Department of Transportation File No. **V-2364**
Proposed Ordinance No. **2003-0050**

NICHOLAS KAZAN AND ROBIN SWICORD
Road Vacation Application

Road: Fernheath Road (also known as King County Road no. 925)

Petitioners: **Nicholas Kazan and Robin Swicord**
3014 – 3rd Street
Santa Monica, CA 90405

SUMMARY OF RECOMMENDATIONS:

Department's Preliminary:	Approve road vacation
Department's Final:	Approve road vacation
Examiner:	Approve road vacation

DEPARTMENT'S REPORT:

The Department of Transportation's written report to the King County Hearing Examiner for Item no. V-2364 was received by the Examiner on March 12, 2003.

PUBLIC HEARING:

After reviewing the Department of Transportation's Report and examining available information on file with the petition, the Examiner conducted a public hearing on the subject as follows:

The hearing on item no. V-2364 was opened by the Examiner at 1:30 p.m. on March 26, 2003, in Union Bank of California, 5th floor conference room, 900 Fourth Avenue, Seattle, WA 98164, and adjourned at 1:50 p.m. The hearing was administratively continued to receive the Affidavit of Public Notice Publication (exhibit no. 16), whereupon the hearing record closed on April 3, 2003. Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Road name and location:	Portion of Fernheath Road (also known as King County Road no. 925) Thomas Bros. King County Atlas page 684, B7
Right of way classification:	“C” Class
Area:	33,715 sq. ft.
Compensation:	\$6,358.79

2. The Examiner adopts and incorporates herein by this reference the facts set forth in the Department of Transportation's report to the King County Hearing Examiner for the March 26, 2003, public hearing and the statement of facts contained in Proposed Ordinance No. 2003-0050. The Department's report will be attached to those copies of this report and recommendation that are submitted to the Metropolitan King County Council.
3. Maps showing the vicinity of the proposed vacation and the specific area to be vacated are Attachments 1 and 2 to this Report and Recommendation.
4. The Petitioners have no intention of developing tax lot no. 1522039109 (the northernmost of two tax parcels affected by this petition), as indicated in their letter of petition (exhibit no. 3). Therefore, any loss of theoretical building lots is not relevant to this review.
5. Tax lot no. 1522039100 abuts the subject property along its north boundary. Fernheath Road right-of-way extends across that property approximately 400+ feet. KCRS section 2.07 requires a turnaround bulb whenever a cul-de-sac serves “more than two lots and extends more than 150 feet from the centerline of [the] accessing street.” In this case, however, Fernheath Road is not developed in any manner and, therefore, serves no parcels. Future access to the subject properties will be obtained by private easement road from the south. At such time the northerly abutting tax lot no. 1522039100 is subdivided, it would be required to provide a turnaround. However, subdivision of that property, or any of these properties, is highly unlikely—in fact, remotely speculative—considering that the King County Comprehensive Plan designates the subject property and surrounding environs “Rural.” Thus, there is no need to require the Petitioner to set aside sufficient right-of-way to accommodate a turnaround right away at the (new) terminus of Fernheath Road.

6. The Department of Development and Environmental Services reports (exhibit 1-5):

The Department finds that it would not be in conflict with the principles and purposes of the King County Comprehensive Plan and specific plans in the vicinity of the proposed vacation. Additionally, a stream traverses the right-of-way, which is not necessary for neighborhood circulation or for developments which may take place in the area. Further, the site is on Vashon Island, which is designated rural, where the zoning limits development. Therefore, we have no objections to the referenced road vacation request.

Nor has any other agency or utility purveyor indicated any objection to the petitioned right-of-way vacation. The communications from the several agencies and private utility purveyors having interest or expertise related to this development are several years old. However, the Department of Transportation reports there have been no changes in circumstances since those communications were received in 1997.

7. The Department of Transportation reports that vacation of the subject right-of-way would have no adverse effect on the provision of fire and emergency services to the subject property or surrounding area.

CONCLUSIONS:

1. The road subject to this petition is useless as part of the King County road system and the public will be benefited by its vacation.
2. The Notice of Hearing on the report of the Department of Transportation was given as required by law, and a hearing on the report was conducted by the King County Hearing Examiner on behalf of the King County Council.
3. The compensation required by law to be paid as a condition precedent to the vacation of this road has been deposited with King County, and the easements, if any, necessary for the construction, repair and maintenance of public utilities and services have been provided in form satisfactory to the affected public utilities.

RECOMMENDATION:

APPROVE proposed Ordinance No. 2003-0050 to vacate that portion of Fernheath Road described in exhibit nos. 3, 7, and 14 of this hearing record.

RECOMMENDED this 4th day of April, 2003.

T. T. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 4th day of April, 2003, to the following parties and interested persons:

CenturyTel
Attn: Judy Emerick
8102 Skansie Ave.
Gig Harbor WA 98335

Kitty Ogg
PSE
6522 Kitsap Way
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Kim Quinones
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Engineer II
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KSC-TR-0231

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3014 - 3rd St.
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Greg Borba
DDES/LUSD
MS OAK-DE-0100

Clerk of the Council
MS KCC-CC-1025

Curt Crawford
KC Dept. Natural Resources
Water & Land Resources Div.
MS-KSC-NR-0600

Neil DeGoojer
KC Office of Open Space
MS KSC-NR-600

Dennis Gorley
Dept of Transportation
Road Services Division
MS KSC-TR-0231

David Gualtieri
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MS-KSC-TR-0813

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MS RSD-TR-0100

Mark Mitchell
Road Services Division (DOT)
MS KSC-TR-0322

Paulette Norman
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MS-KSC-TR-0231

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Judy Riley
King County DOT
Transit/D&C
MS KSC-TR-0431

Charlie Sundberg
Office of Cultural Resources
Landmarks & Heritage Program
MS STR-CR-0200

Carol Thompson
KC Dept. of Executive Services
MS ADM-ES-0500

Joe Wilson
KC Parks & Cultural Res.
Project Manager
MS LBP-PR-0100

NOTICE OF RIGHT TO APPEAL
AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$250.00 (check payable to King County Office of Finance) *on or before April 18, 2003*. If a notice of appeal is filed, the original and 6 copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council *on or before April 25, 2003*.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 1025, King County Courthouse, 516 3rd Avenue, Seattle, Washington 98104, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within 14 days calendar days of the date of this report, or if a written appeal statement and argument are not filed within 21 calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council on a recommendation of the Examiner shall be final and conclusive unless within twenty-one (21) days from the date of the action an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the action taken.

MINUTES OF THE MARCH 26, 2003 PUBLIC HEARING ON DEPARTMENT OF TRANSPORTATION FILE NO. V-2364

T. T. Titus was the Hearing Examiner in this matter. Participating in the hearing was Jodi Simmons, representing the Department.

The following exhibits were offered and entered into the record:

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|---------------|--|
| Exhibit no. 1 | DOT Report to the Hearing Examiner dated 03/11/2003 with 14 attachments. |
| 1-1 | Letter dated December 29, 1997, from Mary Lamping, Puget Sound Energy |
| 1-2 | Comments on Petition for Vacation from PTI Communications |
| 1-3 | Comments on Petition for Vacation from CATV |
| 1-4 | Comments on Petition for Vacation from King County Fire Dist. 13 |
| 1-5 | Memo dated February 4, 1998, from Marilyn Cox, DDES |
| 1-6 | Comments on Petition for Vacation from Office of Cultural Resources |
| 1-7 | Comments on Petition for Vacation from KC Dept. of Transportation (Metro) |
| 1-8 | Comments on Petition for Vacation from DNR-WLRD-Open Space |
| 1-9 | Comments on Petition for Vacation from KC Parks Dept. |
| 1-10 | Comments on Petition for Vacation from Property Services |
| 1-11 | Comments on Petition for Vacation from Roads Maintenance |
| 1-12 | Comments on Petition for Vacation from KC DNR |
| 1-13 | Memo dated January 6, 1998, from Gary Samek, Traffic Eng. Section |
| 1-14 | Memo dated February 12, 1998, from Don Ding, Transportation System Planning
Section |
| 1-15 | Email dated July 3, 2002, from Dennis Gorley and July 16, 2002, letter from Paulette
Norman to Kyle Cruver |
| Exhibit no. 2 | Petition transmittal letter dated 11/10/1997 to Transportation from Clerk of Council. |
| Exhibit no. 3 | Letter of explanation and Petition for Vacation of a County Road including legal
descriptions of Petitioner's properties. |

- Exhibit no. 4 12/03/1997 letter to petitioner explaining the road vacation process.
- Exhibit no. 5 Copy of Filing Fee - Check #11343 from Robin Swicord and Nicholas Kazan.
- Exhibit no. 6 Vicinity Map.
- Exhibit no. 7 Map depicting vacation area.
- Exhibit no. 8 King County Assessor Map for Section 15, Township 22 N, Range 5 E, W.M.
- Exhibit no. 9 Quit Claim Deed, Volume 790, Page 303 conveying right-of-way.
- Exhibit no. 10 08/01/2002 transmittal letter to Council providing recommendation of KCDOT and County Road Engineer.
- Exhibit no. 11 Letter dated 07/30/2002 to Nicholas Kazan & Robin Swicord identifying amount of compensation with attached Road Vacation Compensation Worksheet V-2364.
- Exhibit no. 12 Ordinance transmittal letter dated 02/04/2003 from King County Executive to Councilmember Cynthia Sullivan.
- Exhibit no. 13 Proposed Ordinance 2003-0050
- Exhibit no. 14 Notice of hearing.
- Exhibit no. 15 Affidavit of posting for hearing.
- Exhibit no. 16 Affidavit of Publication for date of hearing.
- Exhibit no. 17 Copy of check and receipt for payment of vacated land.

TTT:ms
V-2364 RPT

Attachments